

TITLE 18. FRANCHISE TAX BOARD

As required by section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled to be held at 1:00 p.m., September 13, 2011, at 9646 Butterfield Way, Town Center, Golden State Room A/B, Rancho Cordova, California, to consider the amendment of Section 25137-8 under Title 18 of the California Code of Regulations, and the adoption of Section 25137-8.2 under Title 18 of the California Code of Regulations, both of which relate to Motion Picture and Television Film Producers, Distributors, and Television Networks.

An employee of the Franchise Tax Board will conduct the hearing. Interested persons are invited to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action if any person makes such request in writing.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., September 13, 2011. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

AUTHORITY & REFERENCE

Section 19503 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of and to implement, interpret, and make specific Part 10 (commencing with section 17001), Part 10.2 (commencing with section 18401), Part 10.7 (commencing with section 21001) and Part 11 (commencing with section 23001) of the Revenue and Taxation Code. Section 25137 of the Revenue and Taxation Code permits a departure from the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act (UDITPA) when the standard provisions of UDITPA do not fairly reflect a taxpayer's activities in this state. The proposed regulatory action establishes appropriate rules for determining the apportionment factors for Motion Picture and Television Film Producers, Distributors, and Television Networks to fairly reflect their activities in this state.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

In 1982, the Franchise Tax Board adopted Regulation section 25137-8, relating to the apportionment of income for Motion Picture and Television Film Producers and Television Networks.

Subsequent to 1982, the industry has undergone significant changes. In the television industry, technology has changed and there are new types of programming transmitted via digital signal to satellites, accessed online or by affiliates and released to subscribers across the county. Similarly, in the motion picture industry, at the time the regulation was adopted in 1982, the focus was on major studios. While the regulation was subsequently amended to include independent television broadcasters, there was no inclusion of independent film distributors and they are not covered by the existing regulation. At one time, major studios controlled all stages of production and distribution. Now, many of these functions are commonly conducted by a separate entity, whether affiliated or independent. As a result of these changes, the existing regulation does not reflect the composition of the industry as it exists today.

The Multistate Tax Commission (MTC) provides model regulations, statutes and guidelines to promote uniformity in the states' taxation of interstate and foreign commerce. The MTC's model regulation for television and radio broadcasters, Regulation IV.18(h), was last amended in 1996. The proposed adoption of Regulation section 25137-8.2 includes amendments to align the California regulation with provisions contained in the MTC's model regulation. Other amendments are made to reflect the rules contained in Regulation section 25137-12, adopted in 1995, which addresses the print media industry. Finally, other changes from the current regulation have been made to incorporate changes suggested by interested parties.

To provide greater clarity to the existing rules, advertising revenue is now specifically identified as part of "film gross receipts" assigned by Regulation section 25137-8.2. This treatment is consistent with the practice of the Franchise Tax Board under current Regulation section 25137-8. In addition, Regulation section 25137-8.2 identifies "distributors" as part of the industry covered by this regulation, adds definitions, redefines "film" to include news or sports films produced for telecast, and identifies new technology used by the industry since the existing regulation was adopted.

The existing regulation is renumbered as Regulation section 25137-8.1 and its application is limited to taxable years beginning before January 1, 2010. For taxable years beginning on or after January 1, 2010, new Regulation section 25137-8.2 will apply.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Potential cost impact on private persons or businesses affected: The Franchise Tax Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state: None. Motion picture and television film producers, and television networks, have been apportioning income pursuant to Regulation section 25137-8 since 1982. The proposed amendment of the existing regulation will have no effect on businesses currently doing business in California. Adoption of the proposed new regulation should not affect businesses currently doing business in California.

Effect on small business: None. The regulation is primarily utilized by large multi-state corporations and not small businesses.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The Franchise Tax Board has determined that there were no alternatives considered which would be more effective in carrying out the purpose of proposed Regulation section 25137-8.2 or would be as effective and less burdensome to corporate taxpayers.

The proposed regulatory action pertains to corporate taxpayers and therefore does not affect private persons.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

An initial statement of reasons has been prepared setting forth the facts upon which the proposed regulatory action is based. The statement includes the specific purpose of the proposed regulatory action and the factual basis for determining that the proposed regulatory action is necessary.

The express terms of the proposed text of the regulation, the initial statement of reasons and the rulemaking file are prepared and available upon request from the agency contact

person named in this notice. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website identified below.

CHANGE OR MODIFICATION OF ACTIONS

The proposed regulatory action may be adopted after consideration of any comments received during the comment period.

The regulation may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulation should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing who is in need of a language interpreter or sign language assistance should contact the officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-5306; FAX (916) 845-3648; E-Mail: Colleen.Berwick@ftb.ca.gov. In addition, all questions on the substance of the proposed regulation can be directed to Benjamin F. Miller: Telephone (916) 845-3320; FAX (916) 845-3648; E-Mail: Ben.Miller@ftb.ca.gov. The notice, initial statement of reasons and express terms of the regulation are also available at the Franchise Tax Board's website at www.ftb.ca.gov.